

FIRST REGULAR SESSION

SENATE BILL NO. 54

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Pre-filed December 1, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

0402S.011

AN ACT

To repeal sections 115.225, 115.237, 115.249, 115.439, 115.449, and 115.453, RSMo, and to enact in lieu thereof six new sections relating to voting a straight political party ticket.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 115.225, 115.237, 115.249, 115.439, 115.449, and 115.453, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 115.225, 115.237, 115.249, 115.439, 115.449, and 115.453, to read as follows:

115.225. 1. Before use by election authorities in this state, the secretary of state shall approve the marking devices and the automatic tabulating equipment used in electronic voting systems and may promulgate rules and regulations to implement the intent of sections 115.225 to 115.235.

2. No electronic voting system shall be approved unless it:

- (1) Permits voting in absolute secrecy;
- (2) Permits each voter to vote for as many candidates for each office as a voter is lawfully entitled to vote for;
- (3) Permits each voter to vote for or against as many questions as a voter is lawfully entitled to vote on, and no more;
- (4) Provides facilities for each voter to cast as many write-in votes for each office as a voter is lawfully entitled to cast;
- (5) [Permits each voter at a general election to vote for all candidates of one party by one punch or mark or to vote a split ticket, as a voter desires;
- (6)] Permits each voter in a primary election to vote for the candidates of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

only one party announced by the voter in advance;

[(7)] (6) Permits each voter at a presidential election to vote by use of a single punch or mark for the candidates of one party or group of petitioners for president, vice president and their presidential electors;

[(8)] (7) Accurately counts all proper votes cast for each candidate and for and against each question;

[(9)] (8) Is set to reject all votes, except write-in votes, for any office and on any question when the number of votes exceeds the number a voter is lawfully entitled to cast;

[(10)] (9) Permits each voter, while voting, to clearly see the ballot label;

[(11)] (10) Has been tested and is certified by an independent authority that meets the voting system standards developed by the Federal Election Commission or its successor agency. The provisions of this subdivision shall not be required for any system purchased prior to August 28, 2002.

3. The secretary of state shall promulgate rules and regulations to allow the use of a computerized voting system. The procedures shall provide for the use of a computerized voting system with the ability to provide a paper audit trail. Notwithstanding any provisions of this chapter to the contrary, such a system may allow for the storage of processed ballot materials in an electronic form.

4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

115.237. 1. Each ballot printed or designed for use with an electronic voting system for any election pursuant to this chapter shall contain all questions and the names of all offices and candidates certified or filed pursuant to this chapter and no other. As far as practicable, all questions and the names of all offices and candidates for which each voter is entitled to vote shall be printed on one page except for the ballot for political party committee persons in polling places not utilizing an electronic voting system which may be printed separately

and in conformity with the requirements contained in this section. As far as practicable, ballots containing only questions and the names of nonpartisan offices and candidates shall be printed in accordance with the provisions of this section, except that the ballot information may be listed in vertical or horizontal rows. The names of candidates for each office shall be listed in the order in which they are filed.

2. Except as provided in subsection 4 of this section, each ballot shall have:

(1) Each party name printed in capital letters not less than eighteen point in size;

(2) [A circle one-half inch in diameter immediately below each party name;

(3)] The name of each office printed in capital letters not less than eight point in size;

[(4)] (3) The name of each candidate printed in capital letters not less than ten point in size;

[(5)] (4) A small square, the sides of which shall not be less than one-fourth inch in length, printed directly to the left of each candidate's name and on the same line as the candidate's name. When write-in votes are authorized and no candidate's name is to be printed under the name of an office in a party or nonpartisan column, under the name of the office in the column shall be printed a square. Directly to the right of the square shall be printed a horizontal line on which the voter may vote for a person whose name does not appear on the ballot. When more than one position is to be filled for an office, and the number of candidates' names under the office in a column is less than the number of positions to be filled, the number of squares and write-in lines printed in the column shall equal the difference between the number of candidates' names and the number of positions to be filled;

[(6)] (5) The list of candidates of each party and all nonpartisan candidates placed in separate columns with a heavy vertical line between each list;

[(7)] (6) A horizontal line extending across the ballot three-eighths of an inch below the last name or write-in line under each office in such a manner that the names of all candidates and all write-in lines for the same office appear between the same horizontal lines. If write-in votes are not authorized, the horizontal line shall extend across the ballot three-eighths of an inch below the

name of the last candidate under each office;

[(8)] (7) In a separate column or beneath a heavy horizontal line under all names and write-in lines, all questions;

[(9)] (8) At least three-eighths of an inch below all other matter on the ballot, printed in ten-point Gothic type, the words "Instructions to Voters" followed by directions to the voter on marking the ballot as provided in section 115.439;

[(10)] (9) Printed at the top on the face of the ballot the words "Official Ballot" followed by the date of the election and the statement "Instruction to Voters: Place an X in the square opposite the name of the person for whom you wish to vote."

3. As nearly as practicable, each ballot shall be in substantially the following form:

OFFICIAL BALLOT DATE

REPUBLICAN <input type="radio"/> For President and Vice President <input type="checkbox"/>	DEMOCRATIC <input type="radio"/> For President and Vice President <input type="checkbox"/>	THIRD PARTY <input type="radio"/> For President and Vice President <input type="checkbox"/>	INDEPENDENT <input type="radio"/> For President and Vice President <input type="checkbox"/>
For United States Senator <input type="checkbox"/>	For United States Senator <input type="checkbox"/>	For United States Senator <input type="checkbox"/>	For United States Senator <input type="checkbox"/>
For Governor <input type="checkbox"/>	For Governor <input type="checkbox"/>	For Governor <input type="checkbox"/>	For Governor <input type="checkbox"/>
For Lieutenant Governor <input type="checkbox"/>	For Lieutenant Governor <input type="checkbox"/>	For Lieutenant Governor <input type="checkbox"/>	For Lieutenant Governor <input type="checkbox"/>
For Secretary of State <input type="checkbox"/>	For Secretary of State <input type="checkbox"/>	For Secretary of State <input type="checkbox"/>	For Secretary of State <input type="checkbox"/>
For Treasurer <input type="checkbox"/>	For Treasurer <input type="checkbox"/>	For Treasurer <input type="checkbox"/>	For Treasurer <input type="checkbox"/>
For Attorney General <input type="checkbox"/>	For Attorney General <input type="checkbox"/>	For Attorney General <input type="checkbox"/>	For Attorney General <input type="checkbox"/>

For United States Representative <input type="checkbox"/>			
For State Senator <input type="checkbox"/>			
For State Representative <input type="checkbox"/>			
For Circuit Judge <input type="checkbox"/>			

4. **No ballot printed or designed for use with an electronic voting system for any partisan election held under this chapter shall allow a person to vote a straight political party ticket. For purposes of this subsection, a "straight political party ticket" means voting for all of the candidates for elective office who are on the ballot representing a single political party by a single selection on the ballot.**

5. The secretary of state shall promulgate rules that specify uniform standards for ballot layout for each electronic or computerized ballot counting system approved under the provisions of section 115.225 so that the ballot used with any counting system is, where possible, consistent with the intent of this section. Nothing in this section shall be construed to require the format specified in this section if it does not meet the requirements of the ballot counting system used by the election authority.

[5.] 6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

115.249. No voting machine shall be used unless it:

- (1) Permits voting in absolute secrecy;

(2) Permits each voter to vote for as many candidates for each office as he is lawfully entitled to vote for, and no other;

(3) Permits each voter to vote for or against as many questions as he is lawfully entitled to vote on, and no more;

(4) Provides facilities for each voter to cast as many write-in votes for each office as he is lawfully entitled to cast;

(5) [Permits each voter at a general election to vote for all candidates of one party by use of a single lever or to vote a split ticket, as he desires;

(6) Permits each voter in a primary election to vote for the candidates of only one party announced by the voter in advance;

(7) (6) Permits each voter at a presidential election to vote by use of a single lever for the candidates of one party or group of petitioners for president, vice president and their presidential electors;

(8) (7) Correctly registers or records and accurately counts all votes cast for each candidate and for and against each question;

(9) (8) Is provided with a lock or locks which prevent any movement of the voting or registering mechanism and any tampering with the mechanism;

(10) (9) Is provided with a protective counter or other device whereby any operation of the machine before or after an election will be detected;

(11) (10) Is provided with a counter which shows at all times during the election how many people have voted on the machine;

(12) (11) Is provided with a proper light which enables each voter, while voting, to clearly see the ballot labels;

(13) (12) Is provided with a mechanical model, illustrating the manner of voting on the machine, suitable for the instruction of voters.

115.439. 1. If paper ballots or ballot cards are used, the voter shall, immediately upon receiving his ballot, go alone to a voting booth and vote his ballot in the following manner:

(1) If the voter desires to vote [a straight party ticket, he may place a cross (X) mark in the circle directly below the party name at the head of the column, or he may place cross (X) marks in the squares directly to the left of the names of candidates on one party ticket] **for a person whose name appears on the ballot, he may place a cross (X) mark in the square directly to the left of the name of the candidate for whom he desires to vote;**

(2) [If the voter desires to vote a split party ticket, he may place a cross (X) mark in the circle directly below one party name at the head of the column

and cross (X) marks in the squares directly to the left of the names of candidates on other party tickets, or he may place cross (X) marks in the squares directly to the left of the names of candidates on different party tickets;

(3) If the voter desires to vote for a person whose name does not appear on the ballot, he may cross out a name which appears on the ballot for the office and write the name of the person for whom he wishes to vote above or below the crossed-out name and place a cross (X) mark in the square directly to the left of the crossed-out name. If a write-in line appears on the ballot, he may write the name of the person for whom he wishes to vote on the line and place a cross (X) mark in the square directly to the left of the name;

(4) (3) If the ballot does not contain any party designations, the voter shall place a cross (X) mark in the squares directly to the left of the names of the candidates for whom he desires to vote;

(5) (4) If the ballot is one which contains no candidates, the voter shall place a cross (X) mark in the square directly to the left of each "yes" or "no" he desires to vote.

No voter shall vote for the same person more than once for the same office at the same election.

2. For purposes of this section, a punch or sensor mark or any other mark clearly indicating that the voter intends to mark that particular square shall be equivalent to a cross (X) mark.

3. If voting machines are used, the voter shall, immediately upon direction by the judges, go alone to a voting machine, close the curtain and vote in substantially the same manner provided in subsection 1 of this section. Rather than placing cross (X) marks on the ballot, however, the voter shall cause the designations to appear on the face of the voting machine, cast any write-in votes and register his votes as directed in the instructions for use of the machine.

4. If the voter accidentally spoils his ballot or ballot card or makes an error, he may return it to an election judge and receive another. The election judge shall mark "SPOILED" across the ballot or ballot card and place it in an envelope marked "SPOILED BALLOTS". After another ballot has been prepared in the manner provided in section 115.433, the ballot shall be given to the voter for voting.

5. The election authority may authorize the use of a sticker or other item containing a write-in candidate's name, in lieu of a handwritten name. All such stickers and items used by election authorities shall conform to rules and

regulations promulgated by the secretary of state regarding the form of such stickers and items. The secretary of state shall promulgate rules and regulations to prescribe uniform specifications for the form of such stickers and items. If authorized, such sticker or item shall contain a cross (X) mark, or other mark as described in subsection 2 of this section, in the square directly left of the candidate's name and the office for which the candidate is a write-in candidate. A write-in vote that does not meet the requirements of this subsection which appears on a ballot shall not be counted pursuant to sections 115.447 to 115.525. In those jurisdictions using an electronic voting system which utilizes mark sense or optical scan technology and if the election authority authorizes the use of stickers for write-ins, such system shall be programmed to identify and separate those ballots which contain an office in which write-in candidates are eligible to receive votes, and which contain less votes than a voter is entitled to cast. In addition, such sticker shall be considered "printed matter" as defined in subsection 8 of section 130.031, RSMo, and as such shall contain the designation required by subsection 8 of section 130.031, RSMo.

6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

115.449. 1. As soon as the polls close in each polling place using paper ballots, the election judges shall begin to count the votes. If earlier counting is begun pursuant to section 115.451, the election judges shall complete the count in the manner provided by this section. Once begun, no count shall be adjourned or postponed until all proper votes have been counted.

2. One counting judge, closely observed by the other counting judge, shall take the ballots out of the ballot box one at a time and, holding each ballot in such a way that the other counting judge may read it, shall read the name of each candidate properly voted for and the office sought by each. As each vote is called out, the recording judges shall each record the vote on a tally sheet. The votes for and against all questions shall likewise be read and recorded. [In a general

election, the counting judges may separate the straight party ballots from the split party ballots and first read one and then the other.] If more than one political subdivision or special district is holding an election on the same day at the same polling place and using separate ballots, the counting judges may separate the ballots of each political subdivision and special district and first read one set, then the next and so on until all proper votes have been counted.

3. After all of the proper votes on a ballot have been counted, the ballot shall be strung on a wire or string in the order read. After all the ballots have been read and strung and after the recording judges agree on the count, the wire or string shall be tied in a firm knot, and the knot shall be sealed so that it cannot be untied without breaking the seal. Rejected and spoiled ballots shall not be strung but shall be placed in separate containers marked "REJECTED" and "SPOILED".

4. After the recording of all proper votes, the recording judges shall compare their tallies. When the recording judges agree on the count, they shall sign both of the tally sheets, and one of the recording judges shall announce in a loud voice the total number of votes for each candidate and for and against each question.

5. After the announcement of the vote, the election judges shall record the vote totals in the appropriate places on each statement of returns. If any tally sheet or statement of returns contains no heading for any question, the election judges shall write the necessary headings on the tally sheet or statement of returns.

115.453. Election judges shall count votes for all candidates in the following manner:

(1) If a cross (X) mark appears in the [circle immediately below a party name at the head of a column, each candidate of the party shall be counted as voted for. If a cross (X) mark appears in the circle immediately below more than one party name, no candidate shall be counted as voted for, except a candidate before whose name a cross (X) mark appears in the square preceding the name and a cross (X) mark does not appear in the square preceding the name of any candidate for the same office in another column. If a cross (X) mark appears in the circle immediately below a party name at the head of a column, and a cross (X) mark appears in the square next to the name of any candidate in another column, each candidate of the party whose circle is marked shall be counted as voted for, except where a cross (X) mark appears in the square preceding the

name of any candidate in another column. Except as provided in this subdivision and subdivision (2) of this section, each candidate with a cross (X) mark in the square preceding his or her name shall be counted as voted for.

(2) If no cross (X) mark appears in the circle immediately below any party name, but a cross (X) mark does appear in the square next to any candidate's name, the name of each candidate next to which a cross (X) mark appears shall be counted as voted for, and no other name shall be counted as voted for. If cross (X) marks appear next to the names of more candidates for an office than are entitled to fill the office, no candidate for the office shall be counted as voted for. If more than one candidate is to be nominated or elected to an office, and any voter has voted for the same candidate more than once for the same office at the same election, no votes cast by the voter for the candidate shall be counted.

[(3)] (2) No vote shall be counted for any candidate that is not marked substantially in accordance with the provisions of this section. The judges shall count votes marked substantially in accordance with this section when the intent of the voter seems clear. Regulations promulgated by the secretary of state shall be used by the judges to determine voter intent. No ballot containing any proper votes shall be rejected for containing fewer marks than are authorized by law.

[(4)] (3) Write-in votes shall be counted only for candidates for election to office who have filed a declaration of intent to be a write-in candidate for election to office with the proper election authority, who shall then notify the proper filing officer of the write-in candidate prior to 5:00 p.m. on the second Friday immediately preceding the election day; except that, write-in votes shall be counted only for candidates for election to state or federal office who have filed a declaration of intent to be a write-in candidate for election to state or federal office with the secretary of state pursuant to section 115.353 prior to 5:00 p.m. on the second Friday immediately preceding the election day. No person who filed as a party or independent candidate for nomination or election to an office may, without withdrawing as provided by law, file as a write-in candidate for election to the same office for the same term. No candidate who files for nomination to an office and is not nominated at a primary election may file a declaration of intent to be a write-in candidate for the same office at the general election. When declarations are properly filed with the secretary of state, the secretary of state shall promptly transmit copies of all such declarations to the proper election authorities for further action pursuant to this section. The election authority shall furnish a list to the election judges and counting teams prior to election day

of all write-in candidates who have filed such declaration. This subdivision shall not apply to elections wherein candidates are being elected to an office for which no candidate has filed.

~~[(5)]~~ (4) Write-in votes shall be cast and counted for a candidate without party designation. Write-in votes for a person cast with a party designation shall not be counted. Except for candidates for political party committees, no candidate shall be elected as a write-in candidate unless such candidate receives a separate plurality of the votes without party designation regardless of whether or not the total write-in votes for such candidate under all party and without party designations totals a majority of the votes cast.

~~[(6)]~~ (5) When submitted to the election authority, each declaration of intent to be a write-in candidate for the office of United States president shall include the name of a candidate for vice president and the name of nominees for presidential elector equal to the number to which the state is entitled. At least one qualified resident of each congressional district shall be nominated as presidential elector. Each such declaration of intent to be a write-in candidate shall be accompanied by a declaration of candidacy for each presidential elector in substantially the form set forth in subsection 3 of section 115.399. Each declaration of candidacy for the office of presidential elector shall be subscribed and sworn to by the candidate before the election official receiving the declaration of intent to be a write-in, notary public or other officer authorized by law to administer oaths.

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